Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

DOCKET NO.

IN THE UNITED STATES SUPREME COURT

OCTOBER TERM, 1997

FRIEDRICH LU
PETITIONER

v.

DAVID CHRISTIANI, ET AL.
RESPONDENTS

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT FOR THE FIRST CIRCUIT

PETITION FOR CERTIORARI

Friedrich Lu, pro se Petitioner
c/o Middlesex County Law Library
40 Thorndike Street, 4th Fl.
Cambridge, MA 02141-1755

54 pp

QUESTION PRESENTED FOR REVIEW:

Do the dismissals, all on the merits, comport with procedural and substantive due process?

(1) where, after erroneous dismissal under 28 USC § 1915 on a paying litigant, district court was hell-bent to dismiss; this time on the merits, on the entire action, including causes of actions based on state laws (No. 97-1810);

(2) where a district judge issued an injunction premised on imagination that petitioner would later lie; only to disavow it so as to evade possible review of this Court; but meanwhile covertly influenced his colleague, a second district judge, to strike a complaint, again on the false ground that the petitioner violated his injunction (No. 97-2269);

(3) where dismissals were for dismissals' sake (all three cases presented here).

Three cases from the United States Court of Appeals for the First Circuit are presented for review, under S.Ct. Rule 12 ("When two or more judgments are sought to be reviewed on a writ of certiorari to the same court and involve identical or closely related questions, a single petition for a writ of certiorari covering all the judgments suffices").

None of the three cases are reported; no citations are available. The 28 USC § 1254(1) confers on this court jurisdiction to review on a writ of certiorari the orders in question.

The cases are:

(1) Court of Appeals No. 97- 1810 (decided on December 18, 1997; rehearing denied on January 7, 1998.)
Friedrich Lu, Plaintiff/Appellant v. David Christiani, Susan M. Donnelly, Murphy & Riley, Howard Hu, Lewis Pepper, Richard Riley, Margaret M. Klein, Defendants/Appellees

(2) No. 97-2269 (decided on February 2, 1998)
Friedrich Lu, Plaintiff/Appellant v. Scott Harshbarger, Annette Benedetto, Douglas S. Brown, Defendants/Aplellees ,

(3) Nos. 97-2202, 97-2357 (the same case in both district court and Court of Appeals) (decided on November 19, 1997; rehearing denied on December 4, 1997; decided on January 22, 1998.)
Friedrich Lu and others similarly situated, Plaintiffs/Appellants v. David F. Hadlock; Jeffrey C. Turk; Michael J. Powers; Karen Schultz Breda; Laurence M. Starr; Richarf Portal; Nestor Hernandez; Antonio Familia; George A. Berman; Andrea F. Nuciforo, Jr.; Deirdre M. Giblin; Posternak, Blankstein & Lund; Russell F. Conn; Marie E. Deluzio; Conn, Kavanaugh, Rosenthal, Peisch & Ford; Cameron F. Kerry; Michael J. Gill; Wayne P. Godin; Mintz, Levin, Cohn, Ferris, Glovsky & Popeo; Ronald L Brandt; Brandt, Kramer & Figman; Gerald T. Anglin; Tommasino & Tommasino; Willard Stievater; McCullough, Stievater & Polvere; Vernon H. Mark; Marygrace Neal; Gerald F. Moore; Brian Regan; Raya S. Dreben; Isaac Borenstein; Peter M. Lauriat; Defendants/Appellees

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Constitutional provisions, statutes, and regulations involved in the petition:

due process clause of the Fourteenth Amendment to the United States Constitution: "nor shall any State deprive any person of life, liberty, or property, without due process of law"

42 USC 1983: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or Territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action of law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

First Circuit Local Rule 27.1 (Summary Disposition):

At any time, on such motion as the court may order, on motion of appellee or sua sponte, the court may dismiss the appeal or other request for relief or affirm and enforce the judgment or order below if the court lacks jurisdiction, or if it shall clearly appear that no substantial question is presented. In case of obvious error the court may, similarly, reverse. Motions for such relief should be promptly filed when the occasion appear, and must be accompanied by four copies of a memorandum or brief.

Fed.R.Civ.P. 41(b) provides in toto:

"Involuntary Dismissal: Effect thereof.
For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against the defendant. Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and *any dismissal not provided for in this rule*, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operate as an adjudication upon the merits." (emphasis added)

D.Mass. Local Rule 7.1 (Motion Practice)

* * *

(a)(2) Submission of Opposition to Motion

A party opposing a motion, shall file an opposition to the motion within fourteen (14) days after the service of the motion, unless another period is fixed by rule or statute or by order of the court * * *

* * *

(e) Decision of Motion without hearing

Motions that are not set down for hearing as provided in subsection (d) will be decided on the papers submitted after an opposition to the motion has been filed, or if no opposition is filed, after the time for filing an opposition has elapsed.

D.Mass. Local Rule 40.1 (Assignment of Cases)

* * *

(e) Related Civil Case

(3) The [intake] clerk [, when a civil action is commenced,] shall determine which cases are related to and shall assign related case to the same judge without regard to the number of other cases in that category previously assigned to that judge .

(4) The determination of the clerk that two (2) cases are related shall be subject to correction only by the judge to whom they have been assigned, who shall return cases erroneously assigned on that basis to the clerk for reassignment. The determination of the clerk that a case is not related to any other case shall be subject to correction only by the joint decision of the judge to whom it has been assigned and the judge to whom it should be assigned, if related to another case. The judges may then transfer the case pursuant to section (f) and shall notify the clerk of the reason for the transfer.

* * *

(f) Proceedings after Assignment. Unless otherwise ordered by the court, all proceedings in a case after its assignment shall be conducted before the judge to whom it has been assigned, * * *

Three cases from Court of Appeals are presented, see S.Ct. Rule 12, whose disposals make no sense, are chaotic, even schizophrenic. But that is precisely why this Court should GVR this petition.

Statement of the Case

(1) No. 97-1810 (*Lu* v. *Christiani*)

On November 14, 1996, the then three defendants received in-hand service of process *and* a Notice of Deposition, who neither answered nor appeared at deposition. (Lu lost $120 to a court reporter after district court denied Lu's motion to be reimbursed.) On January 8, 1997, 54 days after the in-hand service, the defendants moved for a more definite statement ("Complaint is so incoherent, vague and ambiguous that defendants cannot reasonably be required to frame a responsive pleading"), which contended that *none* of them was served with process ("completely unaware of any action pending against them in the Federal court.") Despite the bold assertion, defendants' motions contained no affidavit, nor had them moved for leave to file the motions out of time. When challenged, all defendants refused discovery on the issue of service but dropped the assertion.

On January 30, 1997, district court *sua sponte)* entered orders (App. A 1-3) dismissing the complaint (A9-10), "under 28 USC § 1915(d) as frivolous," "without leave to amend." Two defects (and only two) were identified, at App. A2:

(1) No "conceivable factual basis for an allegation that any of defendants are state actors."

(2) The 42 USC § 1983 "does not, by its terms create substantive rights."

On February 3 following, Lu moved under Fed.R.Civ.P. 59(e) to vacate dismissal: § 1915 did not apply to Lu, a paying litigant, nor was the complaint frivolous:

(1) Complaint, ¶6a, pointed out that defendants conspired with "Dennis Pultinas, Dr. Ngozi Oleru and Richard Rabin." App. A9-10. The first 2 individuals are city officials and the last, a state official.

(2) Complaint, ¶ 14a, identified the Constitution at issue.

The motion further cited *Garita Hotel Limited Partnership* v. *Ponce Federal Bank, F.S.B.* (CA1 1992) 958 F.2d 15, 18, n. 2. ("When a timely request for reconsideration [after

dismissal] clarifies an otherwise factual ambiguity in a complaint, an order for outright dismissal will not ordinarily be perpetuated").

The next day, February 4, district court issued a second Order of Dismissal, *id.*, A5, oddly allowing 30 days to amend the complaint, *despite its title.* Lu was suspicious of district court's graciousness in the light-speed aboutface. On February 11, Lu filed the Amended Complaint, which was "almost identical" to the original complaint (as defendants later conceded in their appellees' brief) but added

(1) two defendants (Howard Hu and Lewis Pepper, neither of whom were government employees) to the § 1983 count;

(2) a statement that defendants' roles and activities lied within the exclusive knowledge of themselves.

As Lu had predicted, defendants (except Hu and Pepper) on cue from district court, swiftly but without leave, moved for dismissal, arguing federal court has no subject matter jurisdiction. (Later, the jurisdictional statement of appellees' brief stated, "Lu's claim for damages under 42 USC § 1983 is not sufficient to confer jurisdiction on District Court because Lu's claim is frivolous.") Their motion was quickly "allowed" (in a marginal note) 5 days later (on February 19, 1997) by district court, before Lu could oppose.

Lu moved for issuance of summonses for the newly added defendants (Hu; Pepper) who had not moved for dismissal, as allowance of the above motion did not affect *them*. District court mooted the motion ("This case has been dismissed.") *Id.*, A11. On April 10, district court granted those appearing defendants' motion to enter a final judgment and ordered, "Counsel shall prepare proper form of judgment for signature by the court." A12. Defendants provided a judgment, leaving blank for date and signature, which enunciated that the "action" was dismissed "on the merits," therefore *with* prejudice. *Id .*, A5. It was signed.

In the Court of Appeals, Lu twice moved for limited remand ("[D]istrict court just wanted to dismiss no matter what. Lu has no idea why his complaint was dismissed and thus cannot prepare his appellant's brief intelligently"). Both motions were denied. A6. Lu's brief argued, among other things:

(1) whatever the cause of dismissal, if district court felt compelled to reverse the first dismissal, certainly it had no

reason to dismiss an "almost identical" amended complaint two weeks later.

(2) if there was no federal jurisdiction, the complaint could not be dismissed "on the merits."

(3) "The [district court's] improper finding of mootness cannot itself moot the case." *Cardinal Chemical Co.* v. *Morton Int'l, Inc.* (1993) 508 U.S. 83, 89, n. 9.

Court of Appeals affirmed, A7, "because it did not state a cognizable federal claim," which in *White* v. *Gittens* (CA1 1997) 121 F.3d 803, 806, n. 2 was defined as lack of jurisdiction. Petition for rehearing was denied. App. A8.

(2) No. 97-2269 (*Lu* v. *Harshbarger*)

On September 9, 1997, Lu paid the fee and filed the complaint, *id.*, B5-6. (Massachusetts state laws forbids its attorney general to represent cities, counties, or their officials in a civil action). The clerk assigned the case to District Judge Woodlock (D.Mass. No. 97-12021-DPW). Three days later, the complaint was ordered by both District Judge Keeton and Woodlock to be stricken. *Id.*, B 1-2. The reason: violation of Judge Keeton's Order entered in another case.* How so? As the sole ground of "the same

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* The Order entered by District Judge Keeton on December 5, 1997 ("The Order," App. B8-9; in *Lu* v. *Ravida* (D.Mass. No. 96-11253-REK), was the subject of a petition for writ of certiorari in this court, *sub nom. Lu* v. *Choate, Hall & Stewart*, No. 96-2202.

At the end of a hearing held that day, Judge Keeton distributed the Order which he had prepared *in advance* but whose finding stated that "after hearing this date, [the court] has also found [Lu's pleadings] to be based on factual allegations that are false." (The fact was: During the hearing for motions to dismiss, for fear of summary judgment, Fed.R.Civ.P. 12, Lu declined Judge Keeton's repeated invitations to provide facts not already in the complaint.) Then and there, Judge Keeton orally reaffirmed the scope of the Order: Lu shall not file any paper in that case or commence a new case in either federal or state courts against defendants in that case, 96-11253. *Ibid.* ("to protect persons and entities against whom plaintiff has made insupportable claims * * * based on any of the same allegations or circumstances as plaintiff has alleged in this civil action").

To appeal the Order, Lu filed a Notice of Appeal at district court, as requested by Fed.R.App.P. But Judge Keeton would not have it docketed. Lu turned to the Court of Appeals for permission to file the notice there. Afterwards, Judge Keeton entered a special order to allow Lu to do just that. B10. A portion of hearing transcript was submitted and the remaining was forthcoming, Court of Appeals was told several times. On April 3, it was submitted, the filing of which was granted on the same day. *Id.*, B11.

allegations or circumstances" presented by two cases, *ibid*, it seized on one sentence in Lu's complaint in 97-12021, which stated that defendants in that case

> "submitted an order from a third case (issued by District Judge Robert E. Keeton against Lu on December 5, 1996), fully aware that the order, an injunction, had been based on fictitious events and causes fabricated by Judge Keeton."

It is undisputed that the two cases (96-11253-REK and 912021-DPW), concerning different sets of defendants, and different circumstances, are not related at all. (For this reason, there is no need to reprint the complaint in the case 96-11253.) Further, Judge Keeton around that time expressly disavowed any intention to restrict Lu's filings anywhere. See note, *supra*. As a result, there could be no violation. Lu brought all the maddening inconsistencies to the attention of both judges in vain. Order of dismissal was entered. B3. Court of Appeals affirmed ("we perceived no substantial reason to overturn the order of dismissal").

The next day, that court affirmed the Order, *id*., B12-13, contending that it did not have the benefit of the remaining transcript (although what transpired in the hearing was uncontroverted). Pointing this out, Lu petitioned for rehearing, which was denied. B14.

Before this Court resumed from summer recess, Judge Keeton held a hearing on September 15, 1997, for that case, No. 96-11253, solemnly declared

(1) that Lu and all other parties there had misunderstood the Order;

(2) that Lu could have filed any paper Lu wanted, that indeed he (Judge Keeton) had been waiting for Lu's paper, and then Judge vacated the Order on the spot.

In the hearing, Judge Keeton did not divulge that 3 days before, he and Judge Woodlock had signed an order in case 97-12021-DPW, giving the December 5 Order a diagonally opposite, expansive, and unexpected meaning.

Lu dutifully reported the new development to this Court, maintaining that the petition was not rendered moot. The court denied the petition. _ U.S._, 118 S.Ct. 76.

The 96-11253-REK is still pending before Judge Keeton.

(3) Nos. 97-2202, 97-2357 (*Lu* v. *Hadlock*)

Finally Lu used up the money, but needed (and still needs) to file a notice of appeal at a state court. In October, 1997, Lu filed a complaint, *id.*, C10-12, together with a motion for injunctive relief, C13-15, and an application waive the filing fee only. (Defendants were served and most have appeared since.) Within days, district court *sua sponte* entered an order allowing the fee waiver, dismissed the complaint under 28 USC § 1915 and want of federal jurisdiction, and denied injunctive relief. C1-4. Lu petitioned for mandamus and appealed from a final judgment, 28 USC § 1291. Invariably it takes about one month for the record to reach Court of Appeal and then a docket number was assigned. In dire need for injunctive relief, Lu succeeded in asking Clerk's Office of that court to assign a docket number right away (it was No. 97-2202), hoping that Court of Appeals would rule on a similar motion for injunctive relief. It did not act in time, and Lu improvised. C16. No briefing schedule was issued; no defendant filed a brief as appellees or respondent. Three weeks later, on November 19, 1997, Court of Appeals affirmed "for want of federal subject matter jurisdiction." C6-7. Lu petitioned for rehearing, literally saying: Wait a minute. What did the court decide? What was the review standard? Petition for mandamus, appeal, both, or neither? The title of Appendices C6 and C7 ("In re Friedrich Lu, Petitioner") suggested a decision on petition for mandamus. However, they mentioned "appeal," "record" in the text. And the appeal record had not reached Court of Appeals until November 26, 1997 (after the decision on the 19th) *id.*, C5, when it was docketed as No. 97-2357.

On December 3 following, Lu inquired whether Court of Appeals would like to consolidate 97-2202 and -2357, as they came from the same case below. (Clerk's Office somehow lost the in-hand filing and Lu re-filed it 1 week later.) On December 4, Court of Appeals denied rehearing on 97-2202. C8. As for 97-2357, before any briefing, the same panel dismissed the appeal, saying Lu's statement that this appeal No. 97-2357 presented the same issues as Lu's prior "appeal" No. 97-2202, which it noted already had been decided "on the merits."

Argument

(1) Dismissals contravene procedural and substantive due process. A lawsuit is a protected property interest. *Logan* v. *Zimmerman Brush Co.* (1982) 455 U.S. 422, 429.

District courts below never afforded Lu a chance to be heard before dismissal of action, whether Lu paid the fee or not, in contravention of *Forte* v. *Sullivan* (CA1 1991) 935 F.2d 1,3; *Neitzke* v. *Williams* (1989) 490 U.S. 319, 329-330; D.Mass. Local Rule 7.1.

Carey v. *Piphus* (1978) 435 U.S. 247, 266, stated:

> the right to procedural due process is absolute in the sense that it does not depend upon the merits of a claimant 's substantive assertions, and because of the importance to organized society that procedural due process be observed * * *

Accord, *Hammond Packing Co.* v. *Arkansas* (1909) 212 U.S. 322, 350 ("The fundamental guarantee of due process is absolute and not merely relative"); *Groppi* v. *Leslie* (1972) 404 U.S. 496. In Nos. 97-2202 and -2357, after dismissal Lu elected to pay but was declined. Compare *Denton* v. *Hernandez* (1992) 504 U.S. 25, 34 ("Because a § 1915(d) dismissal is not a dismissal on the merits * * * the dismissal doe not prejudice the filing of a paid complaint including the same allegations").

Due process is intended to secure the individual from the arbitrary exercise of the powers of government (of which the court is a branch) and bar certain government actions regardless the fairness of the procedures. *Daniels* v. *Williams* (1986) 474 U.S. 327, 331.

(2) Additionally, arguments for No. 97-2269 are as followed.

(i) It is Clerk who assigns a cases. D.Mass. Local Rule 40.1. At worst, Clerk's erroneous determination on relatedness results in reassignment. *Ibid.* But Judge Keeton could not have had the case due to his "personal knowledge of disputed evidentiary facts concerning the proceeding," 28 USC § 455(B)(1), i.e., circumstances surrounding issuance of the December 5 Order.

(ii) Judge Woodlock was assigned the case 97-12021-DPW. Judge Keeton's joint ruling violated D.Mass. Loc.R. 40.1 (f).

(iii) The *ex parte* communications between judges violated Canon 3A(4) of Code of Conduct for United States Judges ("A judge shall * * * except authorized by law, neither initiate nor consider *ex parte* communications on the merits, or procedure affecting the merits, of a pending or impending proceeding").

(iv) Because the Order of Dismissal, App. B3, cited no rule, dismissal was *on the merits*. Fed.R.Civ.P. 41(b). (Whether Judge Woodlock intended this is unknowable.) It is a Fifth Amendment taking of Lu's property, the lawsuit, without due process or compensation.

And arguments for Nos. 97-2202, 97-2357 are as followed.

Memorandum of dismissal, App. C1-3, runs against case laws of this Court:

(i) *Reiter* v. *Sonotone Corp.* (1979) 442 U.S. 330 (consumer as standing to sue in Sherman Antitrust Act, as opposed to business competitor)

(ii) Conspiracy allegation in the complaint can follow the language of the statute. See *Kush* v. *Rutledge* (1983) 460 U.S. 719, 721, n. 1. Whatever the pleading requirement for conspiracy, Lu's complaint does not rely merely on it (conspiracy). See *Wyatt* v. *Cole* (1992) 504 U.S. 158.

(iii) No immunity is available for injunctive relief. *Mitchum* v. *Forester* (1972) 407 U.S. 225; *Pulliam* v. *Allen* (1984) 466 U.S. 522; *Dennis* v. *Sparks* (1980) 449 U.S. 24. At very least, declaratory relief is warranted.

(iv) It is crystal clear, from reading Lu's motion for injunctive relief , C13-15, that Lu did not intend to appeal from state court to federal court.

(v) Mandamus petition was appropriate "to compel an inferior court to exercise its authority when it is its duty to do so." *Kerr* v. *United States District Court* (1976) 426 U.S. 394, 402.

Why Petition for Writ of Certiorari Should Be Granted

Each year, this Court hear only 1 % of petitions, anticipating the lower courts to follow the decided cases diligently. Fairness aside, the principles involved here are well settled, but the courts below refuse to follow. S.Ct Rule 10 call for an exercise of this Court's supervisory power.

After *Leatherman* v. *Tarrant County* (1993) 507 U.S. 163, many a case in the First Circuit is dismissed for want of federal subject matter jurisdiction -- change-of-label devices from Fed.R.Civ.P. 12(b)(6) to Rule 12(b)(1). E.g., *Lu* v. *Hadlcok*, S.Ct. No. 96-1973, cert. denied, _ U.S. _, 118 S.Ct. 71. Federal court has final say on federal laws. After its authoritative interpretation - including lack of federal jurisdiction, a plaintiff cannot turn to state court for the same cause of action.

Relief Sought

GVR (petition for writ of certiorari granted, judgment reversed, and case remanded)

Petitioner: Friedrich Lu, pro se
Signed:
Date: April 6, 1998
Address: c/o Middlesex County Law Library
40 Thorndike Street, 4th Fl.
Cambridge, MA 02141-1755

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
CIVIL ACTION NO. 96-12257-RGS

FRIEDRICH LU
v.
DAVID CHRISTIANI, SUSAN M. DONNELLY,
and MURPHY & RILEY, P.C.

MEMORANDUM AND
ORDER OF DISMISSAL
January 30, 1997

STEARNS, D.J.

At best one can tell from the pleadings, on August 5, 1996, the plaintiff, Friedrich Lu, filed a pro se lawsuit in Norfolk Superior Court against his physician, Dr. David Christiani. The eight count Complaint alleges that Christiani "started bad mouthing" Lu behind his back in August of 1993 after Lu refused to hire a "lawyer associate" of Christiani's to represent Lu in a lead poisoning lawsuit. Christiani also "caused a phlebotomist to draw blood from Lu without [his] consent." In January, 1994, after Lu sought out Dr. Christiani to inquire why he was trying to "sabotage" Lu's efforts to have his landlord prosecuted,[1] Christiani "intimated Lu that 'police were everywhere looking for you' and directed a hospital staffer to call authority." Christiani thereafter "threatened Lu not to go to that hospital again . . . [on the] pretense . . . that Lu insulted some (unnamed) hospital worker."

On September 27, 1996, Justice O'Brien of the Norfolk Superior Court ordered Lu to amend his complaint within thirty days to provide a more definite statement of his claims. According to the Superior Court docket, Lu failed to comply with Justice O'Brien Order.

Instead, on November 14, 1996, Lu filed this lawsuit in the federal district court. Lu's complaint is a verbatim copy of his Superior Court Complaint except that it joins as additional defendants the lawyer who represents Christiani in the state case, Susan Donnelly and her law firm, Murphy & Riley, P.C. The Complaint alleges that all three defendants violated 42

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[1] Lu's reference to Christiani's connection to the lawsuit against Lu's landlord is not explained in the Complaint.

U.S.C. § 1983, by "obstruct[ing] Lu's access to the government." Lu's section 1983 claim (Count Nine) states in its entirety that "under color of state statute, ordinance, regulation, custom or usage, all defendants subject or cause to be subjected, Lu to the deprivation of rights or privileges secured by due process and equal protection clauses of [the] Fourteenth Amendments to the United States Constitution." On January 8, 1997, the defendants filed a motion for a more definite statement. Lu has filed an opposition to that effect, as well as motions seeking Rule 11 sanction and to disqualify Donnelly as Christiani's counsel.

After reading the pleading, I conclude that this case is appropriate for disposition under 28 U.S.C. § 1915(d) as frivolous.[2] The only basis upon which Lu can invoke the jurisdiction of this court is that any of the defendants are state actor. Moreover, section 1983 "does not, by its own terms create substantive rights, it provides only remedies for deprivations of rights established elsewhere in the Constitution or federal laws." *Kneipp v. Tedder*, 95 F.3d 1199, 1204 (3rd Cir. 1996).

ORDER

For the foregoing reasons, the complaint is DISMISSED as frivolous.[3]

SO ORDERED
/s/ Richard G. Stearns
UNITED STATES DISTRICT JUDGE

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[2] Given the duplicative nature of this complaint and the fact that any amendment based on the facts as alleged would be futile, the court will dismiss the Complaint without leave to amend. Cf. *Wyatt* v. *City of Boston*, 35 F.3d 13, 15 (1st Cir. 1994).

[3] All that remains of Lu's Complaint once stripped of the section 1983 claim are state law claims plead [sic] against Christiani alone. These are identical to the claims alleged in the pending Superior Court action.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FRIEDRICH LU
v.
DAVID CHRISTIANI,
SUSAN M. DONNELLY,
and MURPHY & RILEY, P.C.

CIVIL ACTION NO.
96-12257-RGS

ORDER OF DISMISSAL

STEARNS, D.J. January 30, 1997

In accordance with this Court's Memorandum and Order of Dismissal entered on this date in the above-captioned action,

IT IS HEREBY ORDERED: The above case is hereby DISMISSED.

SO ORDERED.

RICHARD G. STEARNS
UNITED STATES DISTRICT JUDGE

By: /s/ Mary Johnson Robbins
Deputy Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
CIVIL ACTION NO. 96-12257-RGS

FRIEDRICH LU
v.
DAVID CHRISTIANI, SUSAN M. DONNELLY,
and MURPHY & RILEY, P.C.

ORDER OF DISMISSAL
February 4, 1997

STEARNS, D.J.

On February 3, 1997, plaintiff filed a motion to vacate the court's January 30, 1997 Order dismissing his complaint. The motion will be treated as motion to reconsider and will be ALLOWED. Plaintiff will have thirty days from the date of the Order to amend his Complaint to state a cognizable cause of action. Should plaintiff's Amended Complaint fail to do so, the court the court [sic] will dismiss the case on its motion for the reasons stated in its January 30, 1997 Order. *Neitzke* v. *Williams*, 490 U.S. 319, 329 n.8 (1989); *Wyatt* v. *City of Boston*, 35 F.3d 13, 14-15, 15 n. 1 (1st Cir. 1994).

SO ORDERED
/s/ Richard G. Stearns
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FRIEDRICH LU, Plaintiff	)	Civil Action
v.	)	No. 96-12257 RGS
DAVID CHRISTIANI,	)	
SUSAN M. DONNELLY,	)	
MURPHY & RILEY,	)	
HOWARD HU,	)	
LEWIS PEPPER,	)	
RICHARD RILEY,	)	
MARGARET M. KLEIN,	)	
Defendants.	)	

JUDGMENT

This action came before the Court, the Honorable Richard G. Stearns presiding, on defendants' Motion to Dismiss, and the Court on February 19, 1997, having ordered that this action be dismissed and Fed.R.Civ.P. 58(1) allowing for the entry of judgment for defendants,

It is ORDERED and ADJUDGED that the action is dismissed on the merits.

TONY ANASTAS,
CLERK OF COURT

DATED: *April 24, 1997*

By: */s/ Mary Johnson Robbins*
Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 97-1810

FRIEDRICH LU,
Plaintiff, Appellant,

v.

DAVID CHRISTIANI, ET AL.,
Defendants, Appellees.

ORDER OF COURT
Entered August 12, 1997

The district court adequstely indicated its reasons for dismissing appellant's complaint when it wrote "allowed" on appellees' motion to dismiss. No additional statement of reasons is necessary. See Fed.R.Civ.P. 52(a).

Accordingly, appellant's motion for limited remand is denied.

By the Court:
Vincent F. Flanagan,
Acting Clerk

By: /s/ Janice O'Neil
Chief Deputy Clerk

[NOT FOR PUBLICATION]

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 97-1810

FRIEDRICH LU,
Plaintiff, Appellant,

v.

DAVID CHRISTIANI, ET AL.,
Defendants, Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
[Hon. Richard Stearns, U.S. District Court]

Before

Torruella, Chief Judge,
Selya and Stahl, Circuit Judges.

Friedrich Lu on brief pro se.
Susan M. Donnelly, B.B.O. and Murphy and Riley, P.C. on brief for appellees

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December 18, 1997

Per Curiam. Upon careful review of the briefs and record, we conclude that the district court properly dismissed appellant's amended complaint because it did not state a cognizable federal claim. To the extent that appellant attempts to raise other issue [sic] in this appeal, those issues do not merit further comment.

Affirmed. See 1st Cir. Loc. R. 27.1

[NOT FOR PUBLICATION]

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 97-1810

FRIEDRICH LU,
Plaintiff, Appellant,

v.

DAVID CHRISTIANI, ET AL.,
Defendants, Appellees.

Before

Torruella, Chief Judge,
Selya and Stahl, Circuit Judges.

ORDER OF COURT
Entered January 7, 1998

Appellant's petition for rehearing is denied.

By the Court:
/s/ Phoebe Morse
Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Friedrich Lu, Plaintiff	)	Civil Action
v.	)	No. 96-12257 RGS
David Christiani, Susan M. Donnelly, Murphy & Riley, Defendants	)	COMPLAINT

1. Plaintiff Friedrich Lu (Lu) went to Massachusetts Respitratory Hospital (at Braintree), for lead poisoning and was, as a patient, under the care of defendant David Christiani (Christiani), a physician there, first in August, 1993.

2. In that first visit, Christiani asked Lu to hire a lawyer associate of his, to represent Lu in the lead poisoning lawsuit. After Lu said state Attorney General's Office was helping Lu, and after Lu turned down Christiani's request a second time in the second visit in September, 1993, Christiani statrted bad mouthing Lu, telling -behind Lu's back- many people various misconduct Lu was supposed to have committed. Eventually Christiani sabotaged Lu's effort to engage Attorney General's Office to prosecute Lu's landlord.

3. In Lu's September, 1993, visit, Christiani also caused a phlebotomist to draw blood from Lu without Lu's consent.

4. In or about January, 1994, Lu went to see Christiani, wanting to question the latter why he did all this sabotage, while Lu had been trying his best to secure prosecution of his landlord. Upon seeing Lu, Christiani intimated Lu that 'police were everywhere looking for you," and directed a hospital staffer to call authority. At the end of that meeting, Lu had no choice but to reveal Christiani's motive to the staffer, after Christiani at first denied having asked Lu to hire a lawyer.

5. Soon afterwards, Christinani threatened Lu not to go to that hospital again. The pretense was a false accusation that in Lu's January, 1994, visit, Lu insulted some (unnamed) hospital worker.

6. On June 25, 1996, Lu mailed a demand letter to Christiani --registered mail, postage prepaid- under Massachusetts Consumer Protection Act, Gen.L. c. 93A, § 9. To date, Lu has not received any response from Christiani.

6a. Susan M. Donnelly is a lawyer in the law firm, Murphy & Riley. She and Christiani, together with, among other

persons, Dennis Pultinas, Dr. Ngozi Oleru, and Richard Rabin, has obstructed Lu's access to the governement.

Counts 7 to 14 applied to Christiani.

7. Count One: Breach of Fiduciary Duty

8. Count Two: Fraud

9. Count Three: G.L. c. 214, § 1B (Invasion of Privacy)

10. Count Four: Breach of Physician's Duty of Confidentiality

11. Count Five: G.L. c. 12, § 11I (Massachusetts Civil Rights Act)

12. Count Six: Defamation

13. Count Seven: G.L. c. 93A, § 9 (unfair and deceptive practice)

14. Count Eight: Assault and Battery

14a. Count Nine: 42 USC § 1983 (federal civil action for deprivation of rights) Under color of state statute, ordinance, regulation, custom or usage, all defendants subject or cause to be subjected, Lu to the deprivation of rights or privileges secured by due process and equal protection clauses of Fourteenth Amendments to the United States Constitution.

15. Plaintiff requests jury trial on all issues.

Plaintiff: Friedrich Lu
Signed: /s/ Friedrich Lu
Date: November 11, 1996
Address: 123 Sydney Street, #3 Dorchester, MA 02125

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Friedrich Lu, Plaintiff v.	)	Civil Action
David Christiani, Susan M. Donnelly,)		No. 96-12257 RGS
Murphy & Riley, Howard Hu, Lewis	)	
Pepper, Richard Riley, Margaret M.	)	
Klein, Defendants	)	

PLAINTIFF'S MOTION TO ISSUE PROCESS

On February 3, 1997, pursuant to Fed.R.Civ.P. (Rule) 4(d) Plaintiff Friedrich Lu (Lu) asked defendants Lews Pepper and Howard Hu to waive service of a summons. Neither acted within the 30 days requested.Thus, to effect service of process - the cost of which will be imposed on the defendants, Lu on March 26, 1997, suggested Docket Clerk E. Flaherty (Clerk) to issue summonses for said defendants. Not knowing whether she has the authority,* the Clerk, despite Rule 4(b), directed Lu to file the instant motion for appoval of issuance of the summonses.

For this reason, in the meantime, time limit for service, Rule 4(m), should be suspended until the instant motion is decided.

Plaintiff: Friedrich Lu
Signed: /s/ Friedrich Lu
Date: March 28, 1996
Address: 123 Sydney Street, #3 Dorchester, MA 02125

Lu certified that a copy of this document was served by hand on the same day on all defendants (except Hu and Pepper, who have not been served).

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* Lu stated that this case is not closed. The Clerk said she was without knowledge, and neither professed to be able to read this court's mind.

Moot. This case has been ordered dismissed.
/s/ R.G.Stearns DJ
4-7-97

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FRIEDRICH LU, Plaintiff	)	Civil Action
v.	)	No. 96-12257 RGS
DAVID CHRISTIANI, SUSAN M.	)	
DONNELLY, MURPHY & RILEY,	)	
HOWARD HU, LEWIS PEPPER,	)	
RICHARD RILEY, MARGARET M.	)	
KLEIN, Defendants.	)	

DEFENDANTS'[1] MOTION FOR ENTRY OF FINAL JUDGMENT

This action was dismissed in its entirety[2] by this Court on February 19, 1997. Accordingly, defendants move for entry of a final judgment of dismissal pursuant to Fed.R.Civ.P. 58(1).

CERTIFICATE OF SERVICE
I hereby certify that on this day a true copy of the within document was served upon the BBO#129925 plaintiff pro se by mail.
DATED: 4/7/97
/s/ Margaret M. Klein

DATED: April 7, 1997

DEFENDANTS
By their attorneys
/s/ Susan M. Donnelly
SUSAN M. DONNELLY,

MURPHY & RILEY, P.C.
141 Tremont Street, 7th Fl.
Boston, MA 02111
(617) 423-3700

---

[1] The motion was made on behalf of defendants David Christiani, M.D., Susan M. Donnelly, Murphy & Riley, P.C., Richard Riley, and Margaret M. Klein. Defendants Howard Hu and Lewis Pepper have not made an appearance in this case as they were not served.

[2] At plaintiff's request the Court clarified on February 27, 1997 that the Court's February 19, 1997 order dismissed the *entire* case.

ALLOWED. /s/ R. G. Stearns DJ
"Counsel shall prepare proper form of Judgment for signature by the Court."
/s/ M. Robbins
Deputy Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FRIEDRICH LU, Plaintiff v. SCOTT HARSHBARGER, ANNETTE BENEDETTO, DOUGLAS S. BROWN, personally and in their official capacity, Defendants	)))))	Civil Action NO. 97-12021-DPW

Memorandum and Order
September 12, 1997

On September 12, 1997, Friedrich Lu tendered to the clerk of this court a "complaint" and completed a Civil Cover Sheet in which he answered in Part VIII Related Case(s) If Any, "None." This tender and the representation to the clerk made in the Civil Cover Sheet were in violation of the order of December 5, 1996, in *Lu* v. *Ravida*, Civil Action 96-11253-REK, which order included the following provision:

> Effectively immediately and continuing until an order is made be this court vacating or modifying the present Order, plaintiff is ordered not to file any further submission in this case, and not to file in this or any other court any other case based on any of the same allegations or circumstances as plaintiff has alleged in this civil action. A further order regarding plaintiff's making any additional filings will be made by this court not later than the date on which this court has completed its consideration of and ruling upon all pending motions.
>
> If, before this court has terminated or vacated this Order, in violation of this Order, plaintiff tenders to the Clerk for filing any further submission, the Clerk is directed not to receive and file the submission. If plaintiff so requests, the Clerk may stamp the submission "received" and the date on which it is received and, without having filed it, deliver it to the undersigned judge for directions as to disposition.

(Docket No. 46 at 2)

The "complaint" tendered and filed by the clerk as Civil Action 97-12021-DPW includes the following allegation on the first page:

> Among other things, the falsehoods defendants provided in the conference were (1) state Chief Judge John Irwin was the real person who gave the order at issue; (2) they represented Suffolk County, too; (3) they submitted an order from a third case (issued by District Judge Robert E. Keeton against Lu on December 5, 1996), fully aware that the order, an injunction, had been based on fictitious events and causes fabricated by Judge Keeton.

"Complaint" at 1.

Friedrich Lu's contention that the case he wishes to file, designated by the clerk 97-12021-DPW, involved "falsehoods defendants provided," including representations they made by submitting "an order from a third case (issued by District Judge Robert E. Keeton" demonstrates that the new case Friedrich Lu has sought to file is in violation of the order of December 5, 1996, in Civil Action 96-11253-REK that he is "not to file in this or any other court any other case based on *any of the same allegations or circumstances* as plaintiff now alleged in this civil action." *Lu* v. *Ravida*, 96-11253-REK (D.Mass.Dec. 5, 1996) (Docket No. 46 at 2) (emphasis added).

ORDER

For the foregoing reasons, it is ORDERED:

The clerk is directed to strike from the record in 97-12021-DPW the "complaint," and close that case because it was improperly opened in violation of an order of a judge of this court that remained in effect when the "complaint" was tendered for filing.

/s/ Robert E. Keeton
United States District Judge

/s/ Douglas P. Woodlock
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FRIEDRICH LU	)	Civil Action
Plaintiff,	)	NO. 97-12021-DPW
v.	).	
SCOTT HARSHBARGER, ET AL.,	)	
Defendants	)	

ORDER OF DISMISSAL

In accordance with this Court's Memorandum and Order issued September 12, 1997 ([Docket] #5), it is hereby ORDERED that the above-entitled action be and hereby is DISMISSED.

BY THE COURT
/s/ Rebecca Greenberg
Deputy Clerk

DATED: September 29, 1997

[NOT FOR PUBLICATION]

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 97-2269

FRIEDRICH LU,
Plaintiff, Appellant,

v.

HARSHBARGER, ET AL.,
Defendants, Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
[Hon. Douglas P. Woodlock, U.S. District Court]

Before

Torruella, Chief Judge,
Boudin and Stahl, Circuit Judges.

Friedrich Lu on brief pro se.
Scott Harshbarger, Attorney General, and Juliana deHaan Rice, Assistant Attorney General, on appellees' motion for summary disposition and memorandum of law.

February 2, 1998

Per Curiam. Upon review of the record and consideration of the arguments raised in appellant's briefs and the appellees' motion for summary disposition, we perceive no substantial reason to overturn the order of dismissal.
Affirmed. See 1st Cir. Loc. R. 27.1

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Friedrich Lu, Plaintiff v.) Civil Action
Scott Harshbarger, Annette Benedetto,) No. 97-12021 DPW
Douglas S. Brown, personally and in)
their official capacity, Defendants)

COMPLAINT

(1) The court has jurisdiction over this matter pursuant to 28 USC § 1331 & 15 USC § 15.

(2) Plaintiff friedrich Lu (Lu) is in trade/business, deriving his operational funds and loans among the several states and from foreign nations.

(3) Defendants are Attorney General and his aides of Commonwealth of Massachusetts. They are sued personally for damage, and in their personal capacity for injunctive relief.

(4) Lu sued Suffolk County when its district attorney, Ralph C. Martin II, ordered that Lu be denied physical access to the courthouse (D.Mass. Civil Action No. 96-12546 PBS). In or about May, 1997, Lu moved to compel discovery when Mr. Martin did not respond to deposition subpoena. No opposition followed. A status conference would be held on September 3, 1997. Defendants combined and conspired with Mr. Martin and others unnamed herein. Three business days before the scheduled conference, defendants wrote to the court, stating that they represented district attorney and his staff. The day before the conference, Lu informed them, orally in writing, that the representation was forbidden under state laws, for conflicting interests, and for violating Lu's due process. On defendant came to the conference anyway, threw Lu off the track, frustrated and impeded Lu's effort to pursue justice, and deprived Lu of property interest (i.e., the lawsuit)subject to due process protection. Among other things, the falsehoods defendants provided in the conference were (1) state Chief Judge John Irwin was the real person who gave the order at issue; (2) they represented Suffolk County, too; (3) they submitted an order from a third case (issued by District Judge Robert E. Keeton against Lu on December 5, 1996), fully aware that the order, an injunction, had been

based on fictitious events and causes fabricated by Judge Keeton.

(5) Count One (civil action for deprivation of rights; 42 USC § 1983) Under color of state statute, regulation, custom or usage, defendants subject, or cause to be subjected, Lu to deprivation of rights secured by federal laws (D.Mass. Local Rule 7.1(B)(2), 83.5.2(a) & (d)) and the First and Fourteenth (due process and equal protection clauses) Amendments to the United States Constitution.

(6) Count Two (Sherman Antitrust Act; 15 USC § 1) Defendants combine in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations. A lawsuit is a "market."

(7) Lu demands (1) damage, made triple and punitive when laws so require, (2) preliminary and permanent injunction against unauthorized representation, and (3) jury trial on all issues.

Plaintiff: Friedrich Lu, pro se
Signed: /s/ Friedrich Lu
Date: September 8, 1997.
Address: 123 Sydney Street, #3 Dorchester, MA 02125

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Friedrich Lu, Plaintiff v.) Civil Action
Scott Harshbarger, Annette Benedetto,) No. 97-12021 DPW
Douglas S. Brown, personally and in)
their official capacity, Defendants)

PLAINTIFF'S MOTION TO CLARIFY ORDER
AND FOR THE ENTRY OF JUDGMENT

District Judge Douglas P. Woodlock denied plaintiff's motion for full disclosure (Docket #6). Plaintiff wants to know if this is the final say on the motion, or if he should expect District Judge Robert E. Keeton to respond to the motion, alone or in conjunction with Judge Woodlock. Please indicate.

And where appropriate, enter a final judgment pursuant to Fed.R.Civ. P. 58(a) or certify issue for interlocutory appeal. 28 USC § 1992(b).

Plaintiff: Friedrich Lu, pro se Signed: /s/ Friedrich Lu
Date: September 26, 1997
Address: 123 Sydney Street, #3 Dorchester, MA 02125

A copy of motion and memorandum was served on the same day by hand on defendants, on Judges Keeton and Woodlock.

9/29/97 Woodlock, D.J.

No action on this motion shall be taken by Judge Woodlock. No final judgment shall issue, however, an Order of Dismissal, pursuant to the Memorandum and Order shall issue forthwith.

By the Court
/s/ Rebecca Greenberg
Deputy Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FRIEDRICH LU,	)	Civil Action
Plaintiff,	)	No. 96-11253-REK
V.	)	
PAUL RAVIDA, et al.,	)	
Defendants	)	

ORDER
December 5, 1996

This court has found that plaintiff in this case has included in this original complaint claims that, even if factual conclusions alleged in the complaint are assumed to be supportable, are nonetheless unsupported by any legal theory under which this court could have authority under the Constitution and laws of the United States to grant relief. The court has further found that plaintiff has repeatedly filed additional pleadings in this action that are legally insupportable and after hearing this date, has also found to be based on factual allegations that are false. In these circumstances, and because of likelihood that further abuses of the processes of this court for the administration of justice will occur unless the court takes prompt action to protect persons and entities against whom plaintiff has made insupportable claims, and is likely to make further insupportable claims unless this court intervenes.

It is ORDERED:

Effectively immediately and continuing until an order is made be this court vacating or modifying the present Order, plaintiff is ordered not to file any further submission in this case, and not to file in this or any other court any other case based on any of the same allegations or circumstances as plaintiff has alleged in this civil action. A further order regarding plaintiff's making any additional filings will be made by this court not later than the date on which this court has completed its consideration of and ruling upon all pending motions.

If, before this court has terminated or vacated this Order, in violation of this Order, plaintiff tenders to the Clerk for filing any further submission, the Clerk is directed not to receive and file the submission. If plaintiff so requests, the

Clerk may stamp the submission "received" and the date on which it is received and, without having filed it, deliver it to the undersigned judge for directions as to disposition.

/s/ Robert E. Keeton
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FRIEDRICH LU, Plaintiff	)	Civil Action
v.	)	No. 96-11253-REK
PAUL RAVIDA, et al.,	)	
Defendants	)	

ORDER
January 15, 1997

This court's interlocutory Order of December 5, 1996 placed in effect an order, effectively immediately (and continuing until an order is made by this court vacating or modifying that order), ordering the plaintiff

> not to file any further submission in this case, and not to file in this or any other court any other case based on any of the same allegations or circumstances as plaintiff has alleged in this civil action. A further order regarding plaintiff's making any additional filings will be made by this court not later than the date on which this court has completed its consideration of and ruling upon all pending motions.

Plaintiff, as permitted by a later provision of the Order of December 5, 1996, tendered to the clerk of this court, on January 6, 1997, a document entitled "plaintiff's Notice of Appeal," with the request that the clerk present it to the undersigned judge for permission to file it.

The requested permission is granted. The clerk will file the document and forthwith deliver it, a copy of this Order, and a copy of this court's Order of December 5, 1996 to the clerk of the Court of Appeals.

This is not an order regarding appealbility, since that is not a matter for decision by this court absent directions from the Court of Appeals.

/s/ Robert E. Keeton
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 97-1125

FRIEDRICH LU,
Plaintiff, Appellant,

v.

PAUL RAVIDA, ET AL.,
Defendants, Appellees.

ORDER OF COURT
Entered April 3, 1997

Upon consideration of motion,
Leave is granted to file a supplemental appendix to appelees' partial appendix.

By the Court:
William H. Ng, Clerk
By: Janice O'Neil
Chief Deputy Clerk

cc: Friedrich Lu
Michael H. Bunios, Esq.
Robert M. Buchanan, Esq.
Pamela J. Coveney, Esq.
David Sean McMahon, Esq.
Matthew P. Poppel, Esq.
Kathleen M. Genova, Esq.
Douglas S. Brown, Esq.

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 97-1125

FRIEDRICH LU,
Plaintiff, Appellant,

v.

PAUL RAVIDA, ET AL.,
Defendants, Appellees.

Before

Selya, Circuit Judge,
Cyr, Senior Circuit Judge,
Boudin, Circuit Judge.

ORDER OF COURT
Entered April 4, 1997

We have jurisdiction under 28 U.S.C. § 1292(a)(1) to hear this interlocutory appeal from the December 5 order, which restrains appellant Lu from pursuing litigation in the district court and other fora. Accordingly, the order to show cause is discharged.

The directive by the district court is a perfectly routine housekeeping measure insofar as it directs appellant not to file further submissions in the case pending in the district court until the court has completed consideration of the pending motions. The further directive to restrict the filings of related actions in other courts is a far more unusual measure even though it too is temporary; but appellant has deprived us of any means to determine whether the latter directive is ill-founded, because he has expressly declined to furnish a transcript of the hearing from which the order eventuated. (One of the appellees provided a partial transcript, but it does not include any argument or testimony relevant to our determination.) Accordingly, we

think that summary disposition is appropriate under 1st Cir. Loc. R. 27.1, noting that the district court has expressed its intention to revisit the matter when the still-pending motions before it have been resolved.

Therefore, the December 5 order is affirmed. Appellant's motions to docket and expedite the appeal, to stay the December 5 order, and to allow filing of four copies of brief are denied. Appellant's "Emergency Motion for Leave to file a Motion for Injunction at Federal District Court" is denied.

By the Court:
/s/ William H. Ng
Clerk

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 97-1125

FRIEDRICH LU,
Plaintiff, Appellant,

v.

PAUL RAVIDA, ET AL.,
Defendants, Appellees.

Before

Selya, Circuit Judge,
Cyr, Senior Circuit Judge,
Boudin, Circuit Judge.

ORDER OF COURT
Entered April 16, 1997

Upon review of appellant's petition for rehearing and also appellees' late-filed supplemental appendix, we find no reason to depart from our original decision to affirm the December 5 order. Therefore, the petition is denied.

By the Court:
/s/ William H. Ng
Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FRIEDRICH LU	)	Civil Action
Plaintiff,	)	No. 97-12323 GAO
V.	)	
DAVID F. HADLOCK, et al.	)	
Defendants	)	

MEMORANDUM

Plaintiff has submitted for filing his self-prepared complaint against several individuals, judges and laws firms in connection with litigation before Massachusetts state courts. Because plaintiff has moved to file without payment of fees, a summons has not issued in order to allow a preliminary review of plaintiff's complaint to see that it satisfied the requirements of the federal *in forma pauperis* statute, 28 U.S.C. § 1915. Specifically, this statute authorizes federal courts to dismiss such actions if satisfied that the actions either frivolous or malicious. 28 U.S.C. § 1915. A claim "is frivolous where it lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). The Supreme Court held that courts may dismiss *in forma pauperis* complaints *sua sponte* without notice under § 1915, if the claim is based on an indisputably meritless legal theory or factual allegations that are clearly baseless. *Denton v. Hernandez*, 112 S.Ct. 1728 (1992); *Forte v. Sullivan*, 935 F.2d 1 (1st Cir. 1991) (citing *Neitzke v. Williams*, 490 U.S. at 327).

Although pro se complaints are liberally construed, *Haines v. Kerner*, 404 U.S. 519, 520-521 (1972), this court find no arguable basis for the complaint. The instant action is precisely the same action brought against the first twenty four (24) defendants in the action entitled *Lu v. Hadlock*, C.A. No. 95-12041-GAO. In the instant action, plaintiff has added seven additional defendants, including the judicial defendants.

To the extent plaintiff asserts an antitrust claims, there is nothing in the nature of an antitrust claim in his allegations. A claim under 15 U.S.C. § 1 requires that a plaintiff allege a contact [sic] or conspiracy in restraint of trade. A claim under 15 U.S.C. § 2 would require a showing that defendants have intended to achieve and are close to achieving some

monopoly power through anti-competitive or predatory conduct. *See Spectrum Sports, Inc.* v. *McQuillan*, 506 U.S. 447, 453 (1993). Lu fails to allege how trade is being restrained nor can the Court discern what product or market the plaintiff might be seeking to put at issue.

To the extent plaintiff brings this action pursuant to 42 U.S.C. § 1983, all the non-judicial defendants are private parties, and therefore cannot be sued pursuant to 42 U.S.C. § 1983. A party seeking to wield a Section 1983 cause of action against a private individual on grounds of an alleged conspiracy with state officials must submit a complaint that states with specificity the facts that in the plaintiff's mind, show the existence and scope of alleged conspiracy. *Slotnick* v. *Staviskey*, 560 F.2d 31, 33 (1st Cir. 1977). The mere fact that defendants resorted to, or appeared in, state proceedings is insufficient to turn her into a state actor. *See Casa Marie, Inc.* v. *Superior Court of Puerto Rico*, 988 F.2d 252, 259 (1st Cir. 1993).

To the extent plaintiff brings this action against judicial defendants, they are immune from plaintiff's suit. Under the doctrine of judicial immunity, judges may not be sued for actions taken in their judicial capacities unless there is a clear absence of jurisdiction. This is true even if the conduct is in excess of their jurisdiction and done maliciously or corruptly. *Stump* v. *Sparkman*, 435 U.S. 349 (1978). An act is a judicial one if it is normally performed by a judge and if the parties dealt with the judge in his judicial capacity. *Id.* at 362. Plaintiff alleges neither that the trial judge's action were outside the judge's jurisdiction nor that the judge's actions are non-judicial. The actions complained of are acts normally performed by a judge in his or her judicial capacity.

Under the Rooker-Feldman doctrine, lower federal courts do not possess subject matter jurisdiction over appeal from state court decisions. *See District of Columbia Court of Appeals* v. *Feldman*, 460 U.S. 462 (1983); *Rooker* v. *Fidelity Trust Co.*, 263 U.S. 413 (1923). This court cannot review and reverse the decision of the state court and cannot enjoin the enforcement of an oral order issued by Judge Borenstein on February 4, 1997.

The court lacks subject matter jurisdiction because of the absence of a substantial federal claim. The remaining state

law claims must be dismissed as well. *See United Mine Workers of America* v. *Gibbs*, 338 U.S. 715, 725 (1966).

ACCORDINGLY, this court finds no arguable legal basis for the complaint, and this case will be dismissed pursuant to 28 U.S.C. § 1915(e) without further notice after thirty-five (35) days from the date of the accompanying Order, unless before that time plaintiff show good cause, in writing, why this case should not be dismissed for the reasons stated above.

dated at Boston, Massachusetts, this 21 day of October, 1997.

/s/ George A. O'Toole, Jr.
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FRIEDRICH LU	)	Civil Action
Plaintiff,	)	No. 97-12323 GAO
V.	)	
DAVID F. HADLOCK, et al.	)	
Defendants	)	

ORDER ON MOTION TO LIFT IN ORDER ENTERED BY DEFENDANT ISAAC BORENSTEIN

Now before the court is plaintiff's order [sic] seeking to have this court enjoin the enforcement of an oral order imposed by defendant Isaac Borenstein on February 4, 1997.

For the reasons set out in the accompanying memorandum, it is hereby ORDERED, that plaintiff's motion to lift is denied.

dated at Boston, Massachusetts, this 21 day of October, 1997.

/s/ George A. O'Toole, Jr.
United States District Judge

C5

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

97-2357
FILED IN CLERK'S OFFICE
US COURT OF APPEALS
FOR THE FIRST CIRCUIT
Nov 26 854 AM '97

CASE NUMBER:
97CV12323

Lu. et al
v
Hadlock, et al

CLERK'S CERTIFICATE

I, TONY ANASTAS., CLERK OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS, DO HEREBY CERTIFY THAT THE ANNEXED DOCUMENTS AS INDICATED IN THE CERTIFIED COPY OF THE DOCKET AND CONTAINED IN 1 VOLUME(S) ARE THE ORIGINAL PLEADINGS AND CONSTITUTE THE RECORD ON APPEAL IN THE ABOVE ENTITLED CASE FOR THE NOTICE OF APPEAL FILED ON 10/27/97 DOCUMENTS 1 THRU 19.

IN TESTIMONY WHEREOF, I HEREUNTO SET MY HAND AND AFFIX THE SEAL OF THIS COURT ON 11/18/97.

TONY ANASTAS., CLERK
BY: /s/ MATTHEW HOGAN
MATT HOGAN, DEPUTY CLERK

RECEIPT OF THE DOCUMENTS IN THE ABOVE ENTITLED CASE IS HEREBY ACKNOWLEDGED THIS *26* DAY OF *Nov* , 1997.
/s/ CH Goetz
DEPUTY CLERK, COURT OF APPEALS

C6

[NOT FOR PUBLICATION]

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 97-2202

In re:
FRIEDRICH LU,
Petitioner

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
[Hon. George A. O'Toole, Jr., U.S. District Court]

Before

Torruella, Chief Judge,
Selya and Stahl, Circuit Judges.

November 19, 1997

Per Curiam. For the reason stated in the district court order, appellant's complaint properly was dismissed for want of federal subject matter jurisdiction and the district court could not enjoin enforcement of the state court order. Further, we find no basis for mandamus relief here.

The judgment is affirmed, and the petition for mandamus is denied.

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 97-2202

In re:
FRIEDRICH LU,
Petitioner

JUDGMENT
Entered: November 19, 1997

This case came on to be submitted on the briefs, petition, and original record on appeal from the United States District Court for the District of Massachusetts.

Upon consideration whereof, it is now here ordered, adjudged and decreed as follows: The judgment is affirmed and the petition for mandamus is denied. See 1st Cir. Loc.R. 27.1.

By the Court:

PHOEBE MORSE, CLERK

By: /s/ Janice O'Neil
Chief Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 97-2202

In re:
FRIEDRICH LU,
Petitioner

Before

Torruella, Chief Judge,
Selya and Stahl, Circuit Judges.

ORDER OF COURT
Entered December 4, 1997

The original panel of judges having voted against rehearing, and the same three judges being a majority of the active judges of this court and having voted against en banc rehearing, it is ordered that the petition for rehearing and for rehearing en banc be denied.

By the Court:
/s/ Phoebe Morse
Clerk

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 97-2357

FRIEDRICH LU,
Plaintiff, Appellant,

v.

DAVID F. HADLOCK, ET AL.,
Defendants, Appellees.

Before

Torruella, Chief Judge,
Selya and Stahl, Circuit Judges.

Friedrich Lu on brief and petition for mandamus pro se.

ORDER OF COURT
Entered January 22, 1998

Upon review of appellant's filing dated December, 1997, we note appellant's statement that this appeal No. 97-2357 presents the same issues for review as his prior appeal No. 97-2202. We further note that appeal No. 97-2202 already has been decided on the merits, and appellant's petitions for rehearing and rehearing en banc have been denied. Accordingly, we order that this appeal No. 97-2357 be dismissed.

By the Court:
Phoebe Morse, Clerk

By: /s/ Mary O'Gallager
Administrative Manager

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
Civil Action No. 97-12323 GAO

Friedrich Lu and others similarly situated, Plaintiffs v. David F. Hadlock; Jeffrey C. Turk; Michael J. Powers; Karen Schultz Breda; Laurence M. Starr; Richarf Portal; Nestor Hernandez; Antonio Familia; George A. Berman; Andrea F. Nuciforo, Jr.; Deirdre M. Giblin; Posternak, Blankstein & Lund; Russell F. Conn; Marie E. Deluzio; Conn, Kavanaugh, Rosenthal, Peisch & Ford; Cameron F. Kerry; Michael J. Gill; Wayne P. Godin; Mintz, Levin, Cohn, Ferris, Glovsky & Popeo; Ronald L Brandt; Brandt, Kramer & Figman; Gerald T. Anglin; Tommasino & Tommasino; Willard Stievater; McCullough, Stievater & Polvere; Vernon H. Mark; Marygrace Neal; Gerald F. Moore; Brian Regan; Raya S. Dreben; Isaac Borenstein; Peter M. Lauriat; Defendants

COMPLAINT

(1) The court has jurisdiction over this matter pursuant to 28 USC § 1331 & 15 USC § 15.

(2) Plaintiff Friedrich Lu (Lu) is in trade/business deriving his operation funds and loans among the several states and from foreign nations.

(3) Defendants Michael J. Powers; Posternak, Blankstein & Lund; Conn, Kavanaugh, Rosenthal, Peisch & Ford; Cameron F. Kerry; Mintz, Levin, Cohn, Ferris, Glovsky & Popeo; Gerald T. Anglin; Tommasino & Tommasino; Vernon H. Mark; Gerald F. Moore; Brian Regan are similarly engaged in commerce across the state line.

(4) Defendants Raya S. Dreben; Isaac Borenstein; Peter M. Lauriat are judges of state courts of Massachusetts. They are sued personally and in their official capacity for injunctive relief.

(5) The first 3 defendants listed above (Hadlock, Turk, Powers) were Lu's former attorney in an eviction at Boston Housing Court. After being sued for legal malpractice, these defendants have orchestrated clandestinely to harm Lu, funded and coordinated defense of landlord, committed various crimes along the way (like forgery, perjury, obstruction of justice), culminating in corrupt collusion with Judge Peter M. Lauriat to fix cases. All other defendants

(except Dreben and Borenstein) conspired and participated in the scheme.

(6) To further the plot, these defendants took advantage of state's unconstitutional statutes, regulation (Mass. Gen.L. c. 211A, § 19 and Mass.R.App.P. 11, both of which govern direct appellate review from state trial court to Supreme Judicial Court) and customs (pervasive *ex parte* communications; unfettered, indefinite, and unreviewable stay by trial court). Defendant Dreben did so in *Lu* v. *Turk*, Mass.App.Ct. No. 96-P-198; Borenstein in *Lu* v. *Turk* (the successor case), Middlesex Sup.Ct. Civil Action No. 96-3824D.

(7) The scheme is ongoing and open ended.

(8) All defendants (except Dreben and Borenstein) combine to harass and deter Lu from his right to justice in court by massive, concerted, and purposeful group activities.

(9) This conspiracy has injured Lu's trade and/or property interest.

The counts applied to all defendants, but defendants Dreben, Borenstein and Lauriat are charged with Count One only.

(10) Count One (civil action for deprivation of rights; 42 USC § 1983) Under color of state statute, ordinance, regulation, custom or usage, defendants subject, or cause to be subjected, Lu to deprivation of rights secured by the First and Fourteenth (due process and equal protection clauses) Amendments to the United States Constitution.

(11) Count Two (Sherman Antitrust Act; 15 USC § 1) Defendants combine in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states and from foreign nations.

(12) Count Three (Sherman Antitrust Act; 15 USC § 2) Defendants monopolize, attempt to monopolize, or combine or conspire to monopolize trade or commerce among several states.

(13) Count Four (Massachusetts Antitrust Act; Mass. Gen.L. c. 93)

(14) Count Five unfair trade practice; Mass. Gen.L. c. 93A, § 11) Lu engages in the conduct of trade or commerce, and suffers loss of money or property, real or personal, as a result of the use or employment by defendants who engage in trade

or commerce of an unfair method of competition or an unfair or deceptive act or practice declared unlawful.

(15) Count Six (breach of fiduciary duty) Hadlock, Turk and Powers colluded with others to harm, and has harmed, Lu repeatedly and continually.

(16) Count Seven (consumer protection; Mass. Gen.L. c. 93A, § 9)

(17) Count Eight (intentional infliction of emotional distress) By extreme and outrageous conduct which is beyond all possible bounds of decency and utterly intolerable in a civilized community, defendants intentionally or recklessly cause severe emotional distress.

(18) Count Nine (aiding and abetting) Defendants (except Lu's former attorney) knew that conduct of the latter group constitutes a breach of duty and still give substantiated assistance or encouragement to them.

(19) Count Ten (civil conspiracy) Defendants combine and conspire to harm Lu by illegal means to achieve illegal purpose. Their combination possesses a peculiar power of coercion, due to mere force of numbers acting in unison or other exceptional circumstances.

(20) Lu demands (a) damage, made triple and punitive when laws so require, (b) preliminary and permanent injunction against the unconstitutional statutes and practice, (c) certification of class action pursuant to Fed.R.Civ.P. 23, (d) other relief this court deems fit, and (e) jury trial on all issues.

Plaintiff: Friedrich Lu, pro se
Signed: /s/ Friedrich Lu
Date: October 10, 1997
Address: 123 Sydney Street, #3 Dorchester, MA 02125

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Friedrich Lu, et at.,	)	Civil Action
Plaintiffs	)	No. 97-12323 GAO
v.	)	
Dvid F. Hadlock, et al.,	)	
Defendants	)	

PLAINTIFF'S MOTION TO LIFT IN ORDER
ENTERED BY DEFENDANT ISAAC BORENSTEIN

Plaintiff Friedrich Lu requests temporary restraining order and preliminary injunction to forbid enforcement of an oral order imposed by defendant Isaac Borenstein on February 4, 1997, which barred Lu (but not any other parties) from filing any papers in *Lu* v. *Turk*, Middlesex County Civil Action No. 97-3824D.

Lu cannot file, and has not filed, any paper since, although Borenstein rotated out of that courtroom in late April, 1997, and two successive judges rotated in and took over that case. Last month (September, 1997), Borenstein entered an order of dismissal, despite lack of authority to do so (because another judge was presiding over that case).

Lu has missed the deadline in that action to file Mass.R.Civ.P. 59(e) motion for postjudgment relief. Without this court's intervention, Lu will suffer irreparable harm because he won't be able to file a Notice of Appeal on or before October 29, 1997.

Plaintiff: Friedrich Lu, pro se
Signed: /s/ Friedrich Lu
Date: October 10, 1997
Address: 123 Sydney Street, #3 Dorchester, MA 02125

A copy of the motion, memorandum and complaint were served on defendant Issac Borenstein on the same day.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Friedrich Lu, et at., Plaintiffs	)	Civil Action
v.	)	No. 97-12323 GAO
Dvid F. Hadlock, et al.,	)	
Defendants	)	

PLAINTIFF'S MEMORANDUM OF LAW
IN SUPPORT OF INJUNCTIVE RELIEF

Fact

February 4, 1997, had been marked for status conference in *Lu* v. *Turk*, Middlesex County Superior Court Civil Action No. 97-3824D. On that day, without notice, defendants there[1] asserted having just filed both an emergency motion[2] and motions to dismiss at the Clerk's Office - before the conference. Even though Isaac Borenstein, who as a judge was presiding, had [] seen none of the motions (which were still in the Clerk's Office), over plaintiff Friedrich Lu's strong objection, he (Borenstein) signed an order to stay discovery and also orally allowed the second part of defendants' Emergency Motion, to the extent that, except Lu's opposition to motions to dismiss and Lu's motion to disqualify counsel, Lu not file any further pleadings in that actions.[3]

Borenstein promised to rule the motions by the end of February, only to fail to do it. After his term in that courtroom was over on April 30 following, Botenstein took with him the case, but not other cases. In late August, 1997, Borenstein again had to rotate; he once again took Lu's case (and not other cases) with him. One month later, Borenstein entered an order to dismiss, with judgment entered on September 29. Still, he did not lift his order prohibiting Lu

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[1] They are also defendants in the instant action, i.e., Jeffrey C. Turk, David F. Hadlock, Michael J. Powers, Karen Schultz Breda, and George A. Berman.

[2] The motion was dated the same day (Feb. 4), entitled as "Defendants' Emergency Motion to Stay Discovery and Motion for an Injunction to Prevent Plaintiff from Filing Further Pleading."

[3] Later, citing constitutional concerns, Borenstein declined to grant those defendants' third part of the Emergency Motion, which would bar Lu from filing any new action against them.

from filing any paper in that case. Lu could not file Mass.R.Civ.P. 59(e) motion and it looks like that without intervention by this court, Lu may not be able to file his Notice of Appeal.

From May to September, 1997, two other judges sat successively in the courtroom where Lu's case belongs. Due to Borenstein's oral order, Lu could not ask these judges for any relief. Without that order, Borenstein's carrying Lu's case around will look ludicrous, if not unlawful -how could Borenstein and the real judge presiding both rule on the same case? Not to mention Due Process and Equal Protection Clauses of the Fourteenth Amendment.

Borenstein leaves his oral order intact, either he meant it to be a permanent order, or he simply forgot about it - more or less like the would-be Count of Monte-Cristo languished in a dungeon despite shift of political winds several times.[4] Either way was unacceptable.

Argument

Borenstein's order cannot be sustained.
As a plaintiff, Lu's property interest in the case is protected by due process. *Logan* v. *Zimmerman Brush Co.* (1982) 455 U.S. 422, 429. The Emergency Motion and subsequent Borenstein's oral order fail the notice requirement of constitutional proportion. See, *e.g.*, *Mullane* v. *Central Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 314-315. Mass.R.Civ.P. 6 necessitates 7-day notice in avdvance.

Access to the Court is a fundamental constitutional rights based on the First and Fourteenth Amendments to the United States Constitution. *Bounds* v. *Smith* (1977) 430 U.S. 817; *Simmons* v. *Dickhaut* (CA1 1986) 804 F.2d 182.

Plaintiff: Friedrich Lu, pro se
Signed: /s/ Friedrich Lu
Date: October 10, 1997
Address: 123 Sydney Street, #3 Dorchester, MA 02125

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[4] Accused of a confederate of king's political rival, Alexandre Dumas' character was jailed. When the rival came to power years later, the prisoner was forgotten and remained in the dungeon.

To: United States Court of Appeals
for the First Circuit
From: Friedrich Lu, pro se
Signed: /s/ Friedrich Lu
Date: October 29, 1997
Address: 123 Sydney Street, #3 Dorchester, MA 02125

[certificate of service]

My deadline to file a Notice of Appeal at Middlesex Superior Court is today, at 11:59 PM. Nonetheless, this court has not decided my motion for injunctive relief, which was filed 2 days ago. It becomes very difficult for me to comply with an assortment of court rules at both state court and federal court.

As instructed, I have to abide with a court order, however erroneous I consider it is. In re Providence Journal Co. (CA1 1986) 820 F.2d 1354 (en banc) cert. granted sub nom. United States v. Providence Journal Co. (1987) 484 U.S. 814, dismissed on other ground (1988) 485 U.S. 695.

This afternoon, I demonstrated the Notice of Appeal to both state court clerk and defendants of that (state) case. I did not FILE it, though. The case at bar is not moot.